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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,077	06/29/2005	Eduardo-Alexander Van Den Berg	72998-013000/US	4307

7590 04/10/2007  
 Greenberg Traurig  
 Suite 400E  
 2450 Colorado Avenue  
 Santa Monica, CA 90404

EXAMINER

KUMAR, RAKESH

ART UNIT	PAPER NUMBER
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3654

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/10/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/541,077	VAN DEN BERG, EDUARDO-ALEXANDER	
	Examiner	Art Unit	
	Rakesh Kumar	3654	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Amendment Filed 01/11/2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 4-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06/29/2005; 01/11/2007 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **Final Rejection**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "6" has been used to designate both the conveyor coil in Figure 2 and a slide member in Figure 3.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: In specifications page 4, line 24, dividers element (9) is disclosed however it is not shown in the drawings.
3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations "flowers in a vase" as disclosed in claim 11, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations "each of said dispensing devices is designed to handle a vase of a different size" must be shown

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or the feature(s) canceled from the claim(s). It is to be noted the Applicants drawings only disclose "cup like figures, all of the same size". No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartfield et al. (U.S. Patent Number 4,618,073) in further view of Wittern Jr. et al. (U.S. Patent Number 5,791,516).

7. Referring to claims 1 and 3. Bartfield discloses a dispensing assembly (Figure 1) comprising:

a dispensing device as for cups , each comprising a store for a series of nested cups (13-20; Figure 1),

a dispensing mechanism (44) for removing individual cups from said series (13-20) and displacing the individual cups (22; Figure 8),

and actuating means (138; see Figures 8 and 9 in entirety) for said dispensing mechanism (44).

Wittern discloses a vending apparatus wherein the actuating means (Figure 15) is controlled by an electronic controller (11), which is activated upon depositing the appropriate moneys or tokens in the vending apparatus.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an input mechanism in the cup (or vases) dispensing assembly of Bartfield as taught by Wittern to dispense an individual cup upon reacting

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to an insertion of a token input because the cups could be electronically dispensed without a need for a salesperson thus reducing the operating cost.

It would have been further obvious to one of ordinary skill in the art at the time the invention was made to have the dispensing assembly dispense different size cups from one assembly in order to increase the selection.

It would have also been further obvious to one of ordinary skill in the art at the time the invention was made to include two dispensing devices as compared to a single dispensing device as disclosed by the teaching of Bartfield in order to allow multiple users to access the dispensed items. Further, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

8. Referring to claim 2. Bartfield discloses a dispensing assembly (Figure 1) in which the store (see store area holding cup sleeves; Figure 1) is designed to receive multiple series (13-20) arranged next to one another,

one series (series 20) being arranged so as to interact with the said dispensing mechanism (44), and

conveyor means (40-42) being provided in order to move the other series (12-19) into the position of the first series (20).

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9. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartfield as in view of Wittern applied to claim 1 above, and further in view of Gersten et al. (U.S. Patent Number 5,803,264).

10. Referring to claims 11 and 13. Gersten discloses a paper product holder for cups (Figure 2) comprising a support part (28), which can be releasably coupled to the base part (see base of 28) of the holder (Figure 2). Gersten discloses the support part comprises a double-walled part (top and bottom parts of member 28) provided on two sides with an opening (38; see Figure 2) and the two openings being different from one another to compensate the slanted edges of the cup or a vase..

11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teaching of Bartfield in view of Wittern to include a cup holder as disclosed by Gersten above because it would make carrying the cup easier.

12. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teaching of Bartfield in view of Wittern to include a cup (or vase) holder such that when the cup is dispensed it is positioned in a cardboard tray like holder preventing the cup (or vase) from over turning, furthermore the cup holder could be comprised of paper like material encased with a paintable plastic coating.

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13. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the size of the cup or the vase that comprises the series stack to be of a particular diameter and height, since such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

14. Regarding method claims 11-13, although Bartfield in view of Wittern and Gersten do not explicitly disclose a method of using their apparatus, the method steps recited in the claims would inherently be performed when using the apparatus of Bartfield in view of Wittern and Gersten in its usual and expected fashion. See claims above for specific steps.

### ***Response to Arguments***

The Applicant argues the cited reference do not disclose the dispensing of a vase, therefore the cited art do not read of the applicants claimed limitations. Bartfield specifically discloses a vending apparatus designed to dispense a variety of different size cups from the apparatus. In the view of the Office a cup as broadly construed is a vase. The apparatus of Bartfield is specifically designed to dispense cups, since a cup is construed to be a vase, the dispenser of Bartfield would be able dispense vases.

In regards to applicants arguments pertaining to dispensing different sized shapes for vases the applicants drawings only show a single type of vase.



In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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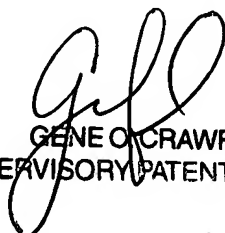
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rakesh Kumar whose telephone number is (517) 272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RK  
March 28, 2007

  
GENE O. CRAWFORD  
SUPERVISORY PATENT EXAMINER